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BRINK'S, INCORPORATED

8
9 **UNITED STATES DISTRICT COURT**
10
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 MIKO STAFFORD, as an individual
and on behalf of all others similarly
situated,

13 Plaintiffs,

14 v.

15 BRINK'S, INCORPORATED, a
Delaware corporation; and DOES 1
through 50, inclusive,

16 Defendants.

17 Case No. CV14-01352 MWF(PLAx)

18 **DEFENDANT'S EX PARTE
APPLICATION FOR ORDER RE
SUBJECT MATTER JURISDICTION**

19 Complaint Filed: January 3, 2014
20 Removal Date: February 21, 2014
21 Trial Date: July 19, 2015
22 District Judge: Hon. Michael W.
23 Fitzgerald
24 Magistrate Judge: Paul L. Abrams
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1 PLEASE TAKE NOTICE that, pursuant to Central District of California Local
 2 Rule (“Local Rule”) 16-2.1, Defendant Brink’s, Incorporated (“Brink’s”), as a “party
 3 that questions the existence of subject matter jurisdiction,” hereby requests the Court
 4 to determine whether subject matter jurisdiction exists. Brink’s further requests that
 5 the Court address the issue on an *ex parte* basis in light of the substantial amount of
 6 pre-trial work to be done over the next several weeks. If the Court determines that
 7 no subject matter jurisdiction exists, then both the parties and the Court will have
 8 expended significant resources when the matter will not be going to trial in this
 9 Court.

10 The basis of this application is as follows:

11 ➤ On May 28, 2014, in ruling on Plaintiff’s Motion for Remand, this
 12 Court determined that subject matter jurisdiction existed pursuant to the Class Action
 13 Fairness Act (“CAFA”). *See* Docket # 24. Specifically, the Court found that the
 14 amount in controversy requirement of CAFA had been satisfied by the amount in
 15 controversy at stake for Plaintiff’s class claim pursuant to California Labor Code
 16 section 226, in addition to the amount in controversy at stake for Plaintiff’s claim
 17 pursuant to the Private Attorneys General Act (“PAGA”). *Id.* In the absence of any
 18 controlling Ninth Circuit authority regarding the issue, the Court based its conclusion
 19 on a finding that the amount in controversy for a PAGA claim could be aggregated
 20 with the amount in controversy for other class claims for purposes of establishing
 21 federal court jurisdiction pursuant to CAFA. *Id.* It was undisputed that the amount
 22 in controversy required by CAFA could not be established without including the
 23 amounts at stake for the PAGA claim. *Id.*

24 ➤ On July 30, 2015, the Ninth Circuit issued its ruling in *Yocupicio v. PAE*
 25 *Group, LLC*, 795 F.3d 1057 (2015) (“*Yocupicio*”), which explicitly addressed the
 26 legal basis for this Court’s May 28, 2014 Order Denying Plaintiff’s Motion for
 27 Remand. In *Yocupicio*, the Ninth Circuit reached the opposite conclusion of this
 28 Court, holding that:

1 Where a plaintiff files an action containing class claims as well as
 2 non-class claims, and the class claims do not meet the CAFA amount-
 3 in-controversy requirement while the non-class claims, standing
 4 alone, do not meet diversity of citizenship jurisdiction requirements,
 5 the amount involved in the non-class claims cannot be used to satisfy
 6 the CAFA jurisdictional amount, and the CAFA diversity provisions
 7 cannot be invoked to give the district court jurisdiction over the non-
 8 class claims.

9 795 F.3d at 1062.

10 ➤ On May 10, 2016, counsel for the parties held their pre-trial conference
 11 pursuant to Local Rule 16-2. In addressing Local Rule 16-2.1, Plaintiff's counsel,
 12 Larry Lee, brought to the attention of Brink's counsel the existence of *Yocupicio* and
 13 its potential effect on the existence of subject matter jurisdiction in this case. *See*
 14 Declaration of Beth Gunn in support of Ex Parte Application for Order re Subject
 15 Matter Jurisdiction ("Gunn Decl."), ¶ 2. On May 11 and 12, 2016, Brink's counsel
 16 conducted research regarding whether a change in the controlling law upon which
 17 the exercise of subject matter jurisdiction was based may be applied retroactively
 18 such that it would divest the federal court of subject matter jurisdiction. *See* Gunn
 19 Decl., ¶ 3. As a result of this research, Brink's counsel became aware of directly
 20 applicable authority holding that, "in cases in which the new rule of law strips the
 21 courts of jurisdiction, the courts must apply that new rule of law retroactively."
 22 *Nunez-Reyes v. Holder*, 646 F.3d 684, 691 (9th Cir. 2011); *see, e.g., United States ex*
 23 *rel. Haight v. Catholic Healthcare West*, 602 F.3d 949, 953 (9th Cir. 2010) (holding
 24 that notice of appeal was untimely based on retroactive application of Supreme Court
 25 opinion overruling circuit precedent); *id.* ("Plaintiffs reasonably relied on Ninth
 26 Circuit precedent that gave them 60 days to file a notice of appeal. But the Supreme
 27 Court has instructed us that concerns of equity must give way before the 'rigorous
 28 rules' of statutory jurisdiction."); *Felzen v. Andreas*, 134 F.3d 873, 877 (7th Cir.

1 1998) (“[W]hen a court ‘applies a rule of federal law to the parties before it, that rule
 2 is the controlling interpretation of federal law and must be given full retroactive
 3 effect in all cases still open on direct review and as to all events, regardless of
 4 whether such events predate or postdate [the] announcement of the rule.’” (citing
 5 *Harper v. Virginia Department of Taxation*, 509 U.S. 86, 97 (1993)). We also
 6 considered the holding in *Caterpillar v. Lewis*, 519 U.S. 61, 69 (1996), that where
 7 district courts lose subject matter jurisdiction at any time prior to final judgment,
 8 remand is appropriate.

9 ➤ Given these authorities, Brink’s questions the existence of subject
 10 matter jurisdiction in this action. *See* Gunn Decl., ¶ 4. Pursuant to Local Rule 16-
 11 2.1, Brink’s is required to raise this issue to the Court, for adjudication prior to the
 12 Final Pretrial Conference scheduled for June 20, 2016. *See* Local Rule 16-2.1 (“If
 13 any party questions the existence of subject matter jurisdiction, that party **shall** raise
 14 the issue by motion to be heard prior to the Final Pretrial Conference”) (emphasis
 15 added); *see also* Docket # 95.

16 ➤ Brink’s has expended substantial resources in preparing this case for
 17 trial, and will continue to do so. *See* Gunn Decl., ¶ 5. Obviously, if the Court rules
 18 that it no longer has subject matter jurisdiction, it makes no sense for either the
 19 parties or the Court to continue expending resources in the upcoming trial
 20 preparation and motion hearing in the current court, which will become moot.

21 For these reasons, Brink’s respectfully seeks an *ex parte* order from the Court
 22 determining whether, under the circumstances described above, subject matter
 23 jurisdiction exists.

24 In compliance with Local Rule 7-19.1, Brink’s counsel gave notice of this *ex*
 25 *parte* application on May 12, 2016 to Plaintiff’s counsel at the following contact
 26 information:

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17 Plaintiff's counsel responded that they did not intend to oppose the *ex parte*
18 application, provided that it was limited to the specific request asking the Court for
19 an order determining whether, under these circumstances, subject matter jurisdiction
20 exists. Plaintiff's counsel reserved the right to oppose the *ex parte* application in the
21 event that, in their estimation, the subject matter of the *ex parte* application exceeds
22 the anticipated scope of this request. *See* Gunn Decl., ¶ 6.

23
24 DATED: May 12, 2016

OGLETREE, DEAKINS, NASH, SMOAK &
25 STEWART, P.C.

26 By: /s/ Beth A. Gunn
27 Beth A. Gunn
28 Aaron H. Cole

29
30 Attorneys for Defendant
31 BRINK'S, INCORPORATED